

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

**KYLE SMITH, IBRAHIM FETAHI,
SHAWN WYNN, ARA SARDARBEGIANS,
RYAN FINK, CHRISTOPHER
HAMILTON, JOHN THOMPSON, BRETT
BONDS, JEFF FONDA, IJANAE
JACKSON, THOMAS CATLETT, and
ERIC WEINBERG; individually, and on
behalf of others similarly situated,**

Plaintiffs,

vs.

TEMPLE UNIVERSITY,

Defendant.

2:18-cv-00590-CMR

CLASS ACTION

**PLAINTIFFS' UNCONTESTED MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENTS**

Plaintiffs, through their undersigned counsel, respectfully file this Motion for Preliminary Approval of Class Action Settlements pursuant to Federal Rule of Civil Procedure 23(e)(1), and move the Court for an Order: (i) granting preliminary approval of the proposed settlements; (ii) certifying two Settlement Classes for settlement purposes; (iii) appointing Blau Leonard Law Group LLC and Brown, LLC as Co-lead Counsel for the two Settlement Classes and George Bochetto of Bochetto & Lentz as counsel for the EMBA students; (iv) appointing Angeion Group, LLC as the Settlement Administrator for the two Settlement Classes.

This Motion is supported by the accompanying Memorandum of Law. Pursuant to the terms of the Settlement Agreements, Defendant does not oppose this Motion.

A proposed Order is submitted for the Court's consideration.

Dated: December 21, 2018

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served upon all counsel of record through the Court's ECF system this 21st day of December 2018.

/s/ Jason T. Brown
Jason T. Brown

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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNCONTESTED
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I. INTRODUCTION

Plaintiffs and Defendant TEMPLE UNIVERSITY (“TEMPLE”), through their respective counsel, have entered into two (2) separate class Settlement Agreements, respective copies of which are attached, on behalf of the following:

- 1) All persons who enrolled as students between January 1, 2015 and December 7, 2018 in TEMPLE’S Fox School of Business and Management’s Online MBA (“OMBA”) program (“the OMBA Class”). Settlement Agreement attached as **Exhibit A**.
- 2) All persons who enrolled as students between January 1, 2015 and December 7, 2018 in TEMPLE’S Fox School of Business and Management’s Global MBA (“GMBA”), Part time MBA (“PMBA”), Online BBA (“OBBA”), Executive MBA (“EMBA”) and the Online Masters in Digital Innovation in Marketing (“DIM”) and Human Resources Management (“HRM”) programs (collectively, the “Other Fox Programs Class”). Settlement Agreement attached as **Exhibit B**.

Plaintiffs’ Second Amended Complaint alleges breach of contract, unjust enrichment, and violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, and seeks injunctive relief, compensatory, consequential, and treble damages, costs and reasonable attorney’s fees for TEMPLE’s alleged deceptive and unfair business practices in misreporting certain data to U.S. News & World Report (“U.S. News”) in connection with the U.S. News rankings process.

The Settlement Agreement for the OMBA Class (the “OMBA Settlement”) creates a gross, non-reversionary cash settlement fund of \$4,000,000 and also establishes substantial non-monetary relief including (i) more rigorous oversight regarding the submission of data for school ranking purposes; (ii) TEMPLE’S formal apology to the student body; (iii) creation of an Ethics Scholarship; (iv) direct/indirect reporting mechanisms, including an anonymous hotline; (v) annual retention of independent auditors; (vi) creation of a Dean’s Student Advisory Council; (vii) creation of an Ethics & Data Integrity Committee; (viii) free access to the OMBA video

vault of recorded educational materials; and (ix) career counseling and additional career services assistance.

The Settlement Agreement for the Other Fox Programs Class (the “Other Fox Programs Settlement”) creates a gross, non-reversionary cash settlement fund of \$1,475,000 and provides the same non-monetary relief as in the OMBA Settlement.

The undersigned counsel for Plaintiffs who have executed the Settlement Agreements respectfully submit that the terms of the Settlement Agreements are fair, reasonable, adequate, and should be preliminarily approved. The Settlement Agreements were the result of good-faith, arm’s-length negotiations between counsel that included two full days of mediation overseen by former Third Circuit Judge Timothy Lewis. The Settlements provide substantial benefits for Members of both Settlement Classes, while avoiding protracted litigation and all risks of continued litigation, including the delay and the risks presented by TEMPLE’s defenses and the fully briefed Motion to Dismiss. Moreover, Rule 23(b)(3) allows any Settlement Class Member who wishes to opt out of the Settlements and pursue his or her individual claim the opportunity to do so.

At this first stage of the settlement approval process, Plaintiffs respectfully request the Court to:

1. Find that the requirements for preliminary approval in newly-effective Rule 23(e)(1)(B) are satisfied, because “the court will likely be able to (i) approve the [settlement] proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal.”
2. Find that the Settlement Agreements resulted from arm’s-length negotiations between the Parties, including via a two-day in-person mediation overseen by an experienced mediator.
3. Certify, for settlement purposes only, the following Settlement Classes:

- a) All persons who enrolled as students in Temple's Fox School of Business and Management's Online Master of Business Administration Program between January 1, 2015 and December 7, 2018 (the "OMBA Class"); and
- b) All persons who enrolled as students in Temple's Fox School of Business and Management's Global Master of Business Administration ("GMBA"), Part-Time Master of Business Administration ("PMBA"), Online Master of Science in Human Resource Management ("HRM"), Online Master of Science in Digital Innovation in Marketing ("DIM"), Executive Master of Business Administration ("EMBA"), and Online Bachelor of Business Administration ("OBBA") Programs between January 1, 2015 and December 7, 2018 (the "Other Fox Programs Class").

4. Find, for settlement purposes only, that the claims against TEMPLE meet all prerequisites of Rule 23(a) and (b) of the Federal Rules of Civil Procedure, including that:

- a. Each Settlement Class is so numerous that joinder of all members is impracticable;
- b. There are questions of law or fact common to each Settlement Class;
- c. Plaintiffs' claims are typical of the claims of Members of their respective Settlement Classes;
- d. Plaintiffs and their counsel are capable of fairly and adequately protecting the interests of the Settlement Classes;
- e. Common questions of law and fact predominate over questions affecting only individual Settlement Class Members and, accordingly, each Settlement Class is sufficiently cohesive to warrant settlement by representation; and
- f. Certification of the Settlement Classes is superior to other available methods for the fair and efficient resolution of the claims of the Settlement Class members.

5. For settlement purposes only, appoint Plaintiffs KYLE SMITH, IBRAHIM FETAHI, SHAWN WYNN, ARA SARDARBEGIANS, RYAN FINK, CHRISTOPHER HAMILTON, JOHN THOMPSON, and BRETT BONDS as the Settlement Class representatives for the OMBA Class.

6. For settlement purposes only, appoint JEFF FONDA, IJANAE JACKSON, THOMAS CATLETT and ERIC WEINBERG as the Settlement Class representatives for the Other Fox Programs Class.
7. Appoint Steven Bennett Blau and Shelly A. Leonard of BLAU LEONARD LAW GROUP LLC and Jason T. Brown of BROWN LLC as Co-Lead Counsel for the OMBA Class and the Other Fox Programs Class (“Co-Lead Counsel”).
8. Appoint George Bochetto of BOCHETTO & LENTZ as counsel for the EMBA students in the Other Fox Programs Class.
9. Within 45 days of entry of this Order, Co-Lead Counsel shall submit to the Court for approval a proposed form of notice; a proposed notice plan; and a proposed allocation plan. Thereafter, the Court will schedule a final approval hearing and set deadlines for the filing of a motion for final approval, a motion for attorneys’ fees; expenses and class representative incentive awards, and also set deadlines for class members to object to or opt out of the settlements.
10. Stay all proceedings in this case pending the Court’s decision as to whether to grant final approval of the Settlements, except as may be necessary to implement the Settlements or comply with the terms of the Settlement Agreements.

II. FACTUAL BACKGROUND

TEMPLE is a public research university in Philadelphia and holds itself out as a national leader in education, research and healthcare, with approximately 40,000 undergraduate, graduate and professional students. TEMPLE’s Fox School of Business and Management (“FOX”) offers more than a dozen specialty master’s degree programs, including those above identified.

Business school rankings are important marketing tools used to recruit elite students, and to attract recruiters from desirable employers. MBA programs vary widely in cost depending on the school. Universities generally charge per credit hour, so total cost will depend on how many classes a student takes to complete all degree requirements.

The least expensive OMBA programs can charge less than \$300 per credit hour for in-state tuition, resulting in total program costs under \$10,000 before financial aid is applied. Top-tier, brand-name business schools can charge more than \$1,500 per credit hour.

U.S. News & World Report (“U.S. News”) started ranking OMBA programs in 2012. In 2014, U.S. News ranked TEMPLE’s OMBA program No. 9. From 2015 to 2018, U.S. News ranked TEMPLE’s OMBA program No. 1. In January 2018, TEMPLE notified U.S. News that TEMPLE had misreported data to U.S. News, including by overstating the number of new entrants for TEMPLE’s 2016-2017 OMBA class who had submitted GMAT scores.

On January 24, 2018, U.S. News removed TEMPLE’s Fox School of Business and Management No. 1 ranked OMBA program from its newest rankings (2018) after finding out that TEMPLE had misreported critical data on this program. In July 2018, TEMPLE announced that it had misreported certain data to U.S. News pertaining to its OMBA, GMBA, PMBA, HRM, DIM, EMBA and OBBA programs.

In September 2018, the parties to this litigation engaged Judge Timothy K. Lewis (Ret.), a former United States Circuit Judge of the United States Court of Appeals for the Third Circuit, who is currently an active firm member and mediator at the law firm of Schnader, Harrison, Segal & Lewis LLP, to mediate the dispute. On October 17 and November 12, 2018, Judge Lewis held two full day in-person mediation sessions with the parties at his Philadelphia office. The resulting arm’s-length negotiations culminated in the enclosed Settlement Agreements. At

the Court's request, Plaintiffs can furnish a declaration from Judge Lewis regarding the mediation.

Prior to mediation, Plaintiffs' counsel conducted extensive interviews with more than 260 potential Settlement Class Members who contacted them. Plaintiffs' counsel prepared and submitted detailed mediation briefs. In connection with the preparation of the Complaints and opposition to Temple's Motion to Dismiss and also submitted mediation memoranda to Judge Lewis. Plaintiffs' counsel also conducted extensive legal and factual research with respect to the asserted claims and defenses. Following each mediation session, the parties continued to confer, negotiate and finalize the terms of the two Settlements and exchange additional information. The Parties then negotiated and drafted the Settlement Agreements now before the Court. Before mediation, the parties fully briefed issues related to the Motion to Dismiss. The settlements obviate the need for the Court to rule on that Motion.

III. THE PROPOSED SETTLEMENTS

A. The Settlement Classes

Plaintiffs and TEMPLE have stipulated in the Settlement Agreements and request that the Court certify two Settlement Classes under Fed. R. Civ. P. 23(b)(3) defined as:

- a) All persons who enrolled as students in Temple's Fox School of Business and Management's Online Master of Business Administration Program between January 1, 2015 and December 7, 2018 (the "OMBA Class"); and
- b) All persons who enrolled as students in Temple's Fox School of Business and Management's Global Master of Business Administration ("GMBA"), Part-Time Master of Business Administration ("PMBA"), Online Master of Science in Human Resource Management ("HRM"), Online Master of Science in Digital Innovation in Marketing ("DIM"), Executive Master of Business Administration ("EMBA"), and Online Bachelor of Business Administration ("OBBA") Programs between January 1, 2015 and December 7, 2018 (the "Other Fox Programs Class").

There are approximately 968 members of the OMBA Settlement Class, and approximately 1998 members of the Other Fox Programs Settlement Class.

B. Creation of Monetary Funds

The Settlement Agreements establish two non-reversionary common funds. TEMPLE shall pay or cause to be paid four million dollars (\$4,000,000) for the release of the claims of the OMBA Class, and one million four hundred seventy-five thousand dollars (\$1,475,000) for the release of the claims of the Other Fox Programs Class. Each fund includes the costs of settlement administration, service awards to the Named Plaintiffs, and attorneys' fees and costs.

After deductions for Court-approved attorneys' fees and costs, class representative incentive award payments, and settlement administration fees and costs, the remaining amounts (the "Net Settlement Fund") will be distributed to respective Class Members in accordance with a plan of allocation, which Plaintiffs' counsel will submit for the Court's approval within 45 days of the entry of an Order granting this Motion.

C. Non-Monetary Component of the Settlements

The settlements include a significant and material non-monetary component that is intended to ensure that TEMPLE's misreporting of data to educational ranking organizations never happens again. The non-monetary relief is common to both the OMBA Class and the Other Fox Programs Class and includes the following:

1. TEMPLE shall issue a formal apology to students, the content of which shall be mutually agreed upon by the Parties.
2. TEMPLE shall establish an ethics scholarship that will award \$5,000 to a single student enrolled in any of the eligible Fox programs as set forth in the Settlement Agreements.

3. TEMPLE shall continue to develop and promote more robust direct and indirect reporting mechanisms, including its anonymous hotline, as well as providing greater education and information regarding whistleblower protections as set forth in the Settlement Agreements.

4. TEMPLE has retained an independent auditor who is working on issues relating to data reporting. TEMPLE agrees to continue to retain an independent auditor for a period of at least the next three academic years (2018-19 through 2020-21).

5. For at least the next three academic years (2018-19 through 2020-21), the Fox Dean shall meet and consult with the Dean's Student Advisory Council and the Ethics & Data Integrity Committee as set forth in the Settlement Agreements. The composition of these committees shall be as set forth in the Settlement Agreements.

6. As promptly as practicable following the conclusion of the Spring 2019 semester, TEMPLE shall make available to all Settlement Class Members free access to the OMBA video vault of recorded educational materials for at least the next three academic years.

7. Beginning with the fiscal year July 1, 2019 to June 30, 2020, Temple will organize and host at least one networking event for alumni of the Fox Settled Programs in New York, New Jersey, Maryland and Delaware, at a time and place to be announced by the Fox Dean.

8. TEMPLE shall make available to Settlement Class Members twelve (12) months of career counseling through Meridian Resources (or a comparable vendor) from the latter of the date of the Settlement Agreements or the student's graduation date.

D. Administration Costs, Service Awards, and Attorneys' Fees and Costs

The Settlement Agreements provide that costs of settlement administration will be paid out of the Settlement Funds. Following a request for proposal and competitive bidding process,

Plaintiffs' counsel recommend Angeion Group, LLC to be appointed by the Court as the Settlement Administrator.

Plaintiffs' counsel will also request that the Court approve service awards for the Named Plaintiffs in an aggregate amount not to exceed \$18,500 for all 12 Named Plaintiffs and Class Representatives.

Plaintiffs' counsel will also petition the Court for reasonable attorneys' fees, payable from the Settlement Funds, in an amount not to exceed one-third (33 and 1/3%) of the total value of the Settlements, plus reimbursement of reasonable out-of-pocket costs. Plaintiffs' arguments in support of the payment of attorneys' fees and costs, and service awards, will be set forth in a subsequent motion that will be filed before the conclusion of the time period for Settlement Class Members to opt out or file objections to the Settlements.

E. Exclusion and Objection Rights

Settlement Class Members may choose to opt out of the Settlement Classes within 60 days from the date the Notice of Settlements is disseminated. Those who wish to opt out can do so by providing a written Opt-Out Form to the Class Administrator that includes their name, address, telephone number, email address, and date of birth, and expressly states that the potential Class Member desires to be excluded from the Settlement Class.

If more than five percent (5%) of either the OMBA Class or the Other Fox Programs Class members submit timely and valid opt-out requests, then TEMPLE may in its sole discretion exercise its right to terminate the Settlement Agreement for the respective class. However, the opt-out requests of one class shall have no effect on the other class.

IV. PRELIMINARY APPROVAL OF THE SETTLEMENTS IS APPROPRIATE

A. The Process for Preliminary Approval

The law strongly favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, cost, and rigor of prolonged litigation. *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594 (3d Cir. 2010); *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004) (“[T]here is an overriding public interest in settling class action litigation and it should therefore be encouraged.”). Where, as here, the parties propose to resolve class action litigation through a class-wide settlement, they must obtain the court’s approval. *See Fed. R. Civ. P. 23(e)*; *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 295 (3d Cir. 2011) (en banc). Approval of a class action settlement involves a two-step process.

First, counsel submits the proposed terms of settlement and the court makes a preliminary fairness evaluation under Rule 23(e)(1)(B). *See Manual for Complex Litigation*, § 21.632 (4th ed. 2004) (hereinafter “MCL 4th”); *see also*, 4 Alba Conte & Herbert Newberg, Newberg on Class Actions § 11:25, at 38-39 (4th ed. 2002) (hereinafter “Newberg on Class Actions”) (endorsing two-step process). At the preliminary approval stage, courts determine only whether:

the proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys, and whether it appears to fall within the range of possible approval.

Mehling v. New York Life Ins. Co., 246 F.R.D. 467, 472 (E.D. Pa. 2007) (quotation marks and citation omitted); *see also, Harry M. v. Pa. Dep’t of Pub. Welfare*, 2013 U.S. Dist. LEXIS 48758, at *3 (M.D. Pa. 2013); MCL 4th § 21.632.

Under Rule 23, a settlement falls within the “range of possible approval” if there is a conceivable basis for finding “that the court will likely be able to … approve the [settlement] proposal under Rule 23(e)(2).” A settlement merits final approval if it is fair, adequate and

reasonable to the class. *Walsh v. Great Atlantic & Pacific Tea Co.*, 726 F.2d 956, 965 (3d Cir. 1983). The fairness, reasonableness, and adequacy of the settlement is assessed at a final hearing. See *In re Diet Drugs Prods. Liab. Litig.*, 553 F. Supp. 2d 442, 451 (E.D. Pa. 2008).

Plaintiffs now respectfully request that this Court take the first step in the settlement approval process and preliminarily approve the Settlements presented on the instant application.

B. A Review of the Applicable Factors Favors Preliminary Approval

The Settlement Agreements are the product of informed, good faith and hard-fought negotiations before a respected mediator after a significant investigation of Plaintiffs' claims, and confer substantial monetary and non-monetary relief on Settlement Class members while avoiding the substantial risks and delays of litigation. Those risks are illustrated by the cases cited in Temple's Motion to Dismiss in which analogous complaints against educational institutions based on misleading statistics and data were dismissed.

At the preliminary approval stage, "the court need not reach any ultimate conclusions on the issues of fact and law that underlie the merits of the dispute." *Mack Trucks, Inc. v. International Union, et al.*, 2011 WL 1833108, at *3 (E.D. Pa. 2011) (internal quotations and citations omitted). Rather, a court should determine whether the "proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies[.]" *Id.* (internal quotations and citations omitted). A district court's evaluation of a request to preliminarily approve a class action settlement typically focuses on whether the settlement is the result of the parties' good-faith arm's-length negotiations, if experienced counsel negotiated and support the settlement, and if the settlement is within the range of reasonableness. *In re Automotive Refining Antitrust Litig.*, 2004 WL 1068807, at *2 (E.D. Pa. 2004). See also *Western Pennsylvania Electrical Employees*

Pension Fund v. Alter, 2014 WL 12608966 (E.D. Pa. April 22, 2014) (Rufe, J.) (granting preliminary approval of settlement as “fair, reasonable, and adequate”).

Here, applying these factors demonstrates that the Settlements should be preliminarily approved.

Whether a settlement arises from arm’s-length negotiations, as it did here, is a key factor in deciding whether to grant preliminary approval. *In re Nat’l Football League Players’ Concussion Injury Litig.*, 301 F.R.D. 191, 198 (E.D. Pa. 2014) (citing *In re CIGNA Corp. Sec. Litig.*, No. 02–8088, 2007 WL 2071898, at *2 (E.D. Pa. 2007) (noting that a presumption of fairness exists where parties negotiate at arm’s-length, assisted by a mediator); *Gates v. Rohm & Haas Co.*, 248 F.R.D. 434, 439, 444 (E.D. Pa. 2008) (stressing the importance of arm’s-length negotiations and highlighting the fact that the negotiations included “two full days of mediation”); *see also*, Newberg on Class Actions, § 11:41 (noting that courts usually adopt “an initial presumption of fairness when a proposed class settlement, which was negotiated at arm’s length by counsel for the class, is presented for court approval”).

Class Counsel had access to a sufficient amount of information to thoroughly understand the factual and legal issues at stake before negotiating and finalizing these settlements. Early settlements are “favored,” *see Simon v. KPMG, LLP, et al.*, 2006 U.S. Dist. LEXIS 35943, at *29 (D.N.J. 2006); and formal discovery is not required before settlement. *See In re PNC Finan. Svcs. Group, Inc. Securs. Litig.*, 440 F. Supp. 2d 421, 433 (W.D. Pa. 2006) (granting final approval to settlement without provision of formal discovery); *In re Rite Aid Corp. Securs. Litig.*, 269 F. Supp. 2d 603, 608 (E.D. Pa. 2003).

Plaintiffs’ counsel had more than the “adequate appreciation of the merits” required in negotiating these settlements. *Simon*, 2006 U.S. Dist. LEXIS 35943, at *29 (quoting *In re*

Prudential Ins. Co. of Am. Sales Practices Litig., 148 F.3d 283, 319 (3d Cir. 1998)). The Complaints and the proposed Settlements are the product of significant investigation of Plaintiffs' claims. As part of their factual investigation, Plaintiffs' counsel conducted lengthy interviews with approximately 280 Settlement Class Members to investigate the impact of the misreporting of data, reviewed documents and information that they obtained from Settlement Class Members, and researched applicable Pennsylvania law.

Furthermore, the parties' counsel are well-experienced in similar litigation. Plaintiffs' counsel have handled and successfully resolved a number of significant mass torts and class actions. See *In re Aon Corp. Wage & Hour Employment Practices Litigation*, 2010 U.S. Dist. LEXIS, 34888, No. 08-cv-5802 (N.D. Ill. Aug. 8, 2010); *Tanner v. TPUSA*, 2014 U.S. Dist. LEXIS 21594, No. 1:12-CV-33 (WLS), (M.D. Ga. Feb. 20, 2014); *McCormick et al v. American Cruise Lines, Inc.*, Case No. 3:15-cv-01721 (D. Conn. 2015); *In re Nuvaring Products Liability Litigation*, MDL Docket No. 1964, No. 4:08-md-1964 (RWS), E.D. Mo.

The parties reached the Settlements only after extensive and hard-fought arm's-length negotiations overseen by Judge Lewis between attorneys familiar with the legal and factual issues of the case and well versed in litigating similar types of claims, and the Settlements are fair, reasonable, and adequate. There are many significant risks to pursuing the litigation, including the uncertain outcome of the factual and legal issues in dispute, the fully briefed and submitted Motion to Dismiss, the substantial expenses and delays that would be encountered in litigating the claims to an uncertain conclusion, and the opposition the Plaintiffs would face through an aggressive defense by TEMPLE'S experienced and highly competent counsel. Indeed, the proposed Settlements stand in stark contrast to the outcomes in numerous other class actions against law schools and other educational institutions, where courts granted motions to

dismiss because of the inability to allege viable damages theories. *See* Temple's briefs in support of Motion to Dismiss. The Parties spent significant time negotiating the terms of the final written Settlement Agreements that are now presented to the Court for approval.

Where, in comparison to a proposed Settlement, proceeding with litigation would require a substantial amount of time and resources with no guarantee of providing a benefit to class members, courts have found that the proposed settlement is fair. *See Craig v. Rite Aid Corp.*, 2013 WL 84928, at *9 (M.D. Pa. Jan. 7, 2013), appeal dismissed (3d Cir. Feb. 20, 2013) (finding preliminary approval of settlement appropriate where “[n]ot only would continued litigation of these cases result in a massive expenditure of Class Counsel’s resources, it would likewise place a substantial drain on judicial resources.”); *see also, In re Certainteed Fiber Cement Siding Litig.*, 303 F.R.D. 199, 216 (E.D. Pa. 2014) (“[I]f the parties were to continue to litigate this case, further proceedings would be complex, expensive and lengthy, with contested issues of law and fact.... That a settlement would eliminate delay and expenses and provide immediate benefit to the class militates in favor of approval.”); *Deitz v. Budget Renovations & Roofing, Inc.*, 2013 WL 2338496, at *5 (M.D. Pa. May 29, 2013) (“The Court sees no reason to needlessly expend judicial resources on a matter that neither party has any interest in continuing to litigate.”).

In summary, the proposed Settlements, compromises representing an assessment of risk by experienced counsel and guided by a mediator and former Judge, are entitled to the presumption of fairness and should be preliminarily approved.

C. The Court Should Provisionally Certify the Settlement Classes

Courts may certify class actions for the purposes of settlement only. *See, e.g., Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 311 (3d Cir. 2011); *In re Processed Egg Prods. Antitrust Litig. (“Eggs”)*, 284 F.R.D. 249, 278 (E.D. Pa. 2012). Before preliminarily approving a settlement in a

case where a class has not yet been certified, the court should determine whether the class proposed for settlement purposes is appropriate under Rule 23. *See Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997); *Sullivan*, 667 F.3d at 296. The MCL 4th advises:

If the case is presented for both class certification and settlement approval, the certification hearing and preliminary fairness evaluation can usually be combined. The judge should make a preliminary determination that the proposed class satisfies the criteria set out in Rule 23(a) and at least one of the subsections of Rule 23(b).

MCL 4th § 21.632.

When a court is “[c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems.” *Eggs*, 284 F.R.D. at 264 (quotation marks and citation omitted); *see also, Sullivan*, 667 F.3d at 322 n.56. Further, the practical purpose of provisional class certification is to facilitate dissemination of notice to the class of the terms of the proposed settlement and the date and time of the final settlement approval hearing. *See MCL 4th § 21.633.*

In this case, all of the requirements of Rule 23(a) and Rule 23(b)(3) are readily met for both Settlement Classes. Rule 23(a) requires a showing that (i) the class is so numerous that joinder of all members is impracticable; (ii) there are questions of law or fact common to the class; (iii) the claims or defenses of the representative parties are typical of the claims or defense of the class; and (iv) the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a). Rule 23(b)(3) requires a showing that “questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

1. The OMBA Settlement Class Meets Rule 23 Requirements

a. Numerosity.

Rule 23(a)(1) requires that a class be “so numerous that their joinder before the Court would be impracticable.” *Eggs*, 284 F.R.D. at 259. According to TEMPLE’S records, there are approximately 968 members of the OMBA Class. The numerosity requirement of Rule 23(a) is easily met here. *See Eggs*, 284 F.R.D. at 260 (quoting *Stewart v. Abraham*, 275 F.3d 220, 227-28 (3d Cir. 2001) (noting that there is no minimum number to satisfy numerosity and observing that generally the requirement is met if the potential number of plaintiffs exceeds 40)).

b. Commonality

Rule 23(a)(2) requires that “there are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). The Supreme Court has emphasized that “for purposes of Rule 23(a)(2), even a single common question will do.” *Wal-Mart v. Dukes*, 131 S. Ct. 2541, 2556 (2011) (internal quotation and alterations omitted); *see also, In re: Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig.*, 2013 U.S. App. LEXIS 14519, at *16 (6th Cir. July 18, 2013) (“We start from the premise that there need be only one common question to certify a class.”); *Baby Neal v. Casey*, 43 F.3d 48, 56 (3d Cir. 1994) (“The commonality requirement will be satisfied if the named plaintiffs share at least one question of fact or law with the grievances of the prospective class.”). The key inquiry for the commonality analysis is whether a common question can be answered in a class wide proceeding, such that the answer will “drive the resolution of the litigation.” *Dukes*, 131 S. Ct. at 2551.

Applying these principles, the OMBA Plaintiffs satisfy the commonality requirement of Rule 23(a)(2). The key questions in this case are:

- (i) Whether TEMPLE breached its educational contract with the OMBA Plaintiffs and members of the OMBA Settlement Class;

- (ii) Whether TEMPLE was unjustly enriched by its wrongful acts and conduct;
- (iii) Whether the OMBA Plaintiffs and the OMBA Settlement Class Members have been harmed and the proper measure of relief.

These questions can be answered on a class wide basis, satisfying Rule 23(a)(2)'s commonality requirement.

c. Typicality

Rule 23(a)(3) requires that the class representatives' claims be "typical of the claims . . . of the class." As the Third Circuit explained, "The typicality inquiry is intended to assess whether the action can be efficiently maintained as a class and whether the named plaintiffs have incentives that align with those of absent class members so as to assure that the absentees' interests will be fairly represented." *Baby Neal*, 43 F.3d at 57-58. Where there is an allegation that the plaintiffs and other class members were targeted by the same wrongful course of conduct under a common legal theory, Rule 23(a)(3) does not mandate that they share identical claims, and "factual differences among the claims of the putative class members do not defeat certification." *In re Prudential*, 148 F.3d at 310. A finding of typicality will be warranted where there is a strong similarity of legal theories. *Id.* The OMBA Plaintiffs' claims are typical of the OMBA Settlement Class Members' claims because they arise out of the same course of conduct as the claims of the Settlement Class – the alleged misreporting by Fox of certain data to U.S. News. Plaintiffs satisfy the typicality requirements of Rule 23(a)(3).

d. Adequacy of Representation

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). To satisfy this requirement, the named class

representatives must “not possess interests which are antagonistic to the interests of the class.” *In re Imprelis*, 2013 U.S. Dist. LEXIS 18332, at *12. The inquiry into the adequacy of the representative parties examines whether “the putative named plaintiff has the ability and the incentive to represent the claims of the class vigorously, that he or she has obtained adequate counsel, and that there is no conflict between the individual’s claims and those asserted on behalf of the class.” *Eggs*, 284 F.R.D. at 261. OMBA Plaintiffs have no conflicts with the OMBA Settlement Class members. *See Amchem Prods.*, 521 U.S. at 625 (holding that a class representative must have no interests antagonistic to the class).

There is nothing to suggest that the OMBA Plaintiffs have interests antagonistic to those of the OMBA Settlement Class. *See Dietrich v. Bauer*, 192 F.R.D. 119, 126 (S.D.N.Y. 2000) (“[G]auging the adequacy of representation requires an assessment whether the class representatives have interests antagonistic to those of the class they seek to represent.”). Here, OMBA Plaintiffs and OMBA Settlement Class Members are equally interested in proving the case as alleged in their Second Amended Complaint, and are committed to obtaining appropriate relief. They meet the adequacy requirement of Rule 23(a)(4).

Rule 23(g) requires that the Court appoint class counsel who will “fairly and adequately represent the interests of the class.” Fed. R. Civ. P. 23(g)(4). The Rule sets forth certain factors for the Court to consider, including: (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel’s knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A).

As described above, Plaintiffs' counsel are experienced and knowledgeable in the prosecution of class actions. Multiple courts across the country have appointed the undersigned firms as lead counsel in mass tort and class actions, which Plaintiffs' counsel have successfully prosecuted. Accordingly, the Court should appoint Plaintiffs' counsel as Class Counsel pursuant to Rule 23(g).

e. Predominance and Superiority

In order to satisfy Rule 23(b)(3)'s requirement that common questions of law and fact predominate, courts look at "whether the proposed class is sufficiently cohesive to warrant adjudication by representation." *In re Cnty. Bank of N. Va. Mortg. Lending Pracs. Litig.*, 2013 U.S. Dist. LEXIS 107048, at *36 (W.D. Pa. 2013); *see also, Amchem*, 521 U.S. at 623; *Sullivan*, 667 F.3d at 297.

In this case, the class action vehicle is best suited for the resolution of the OMBA Settlement Class Members' claims. The OMBA Plaintiffs allege common issues of fact and law that predominate over any individual issues that may arise. Plaintiffs' and the OMBA Settlement Class Members' claims are based on the same legal theory and are based on the same nucleus of facts. Specifically, their claims arise out of TEMPLE's misreporting of certain data, including GMAT score submissions, which affected its U.S. News ranking. Further, a class action suit is superior to any other form of adjudication because it provides the best way of managing and resolving the claims at issue here. "The superiority requirement asks the court to balance, in terms of fairness and efficiency, the merits of a class action against those of alternative available methods of adjudication." *Eggs*, 284 F.R.D. at 264 (quoting *In re Prudential*, 148 F.3d at 316). Considerations of judicial economy and prompt resolution of claims underscore the superiority

of a class action in this case. Individual lawsuits by students would be impracticable in light of the substantial costs of litigation and the considerable difficulty in proving damages.

2. The Other Fox Programs Settlement Class Meets Rule 23 Requirements

a. Numerosity.

According to TEMPLE'S records, there are approximately 1998 members of the Other Fox Programs Settlement Class. The numerosity requirement of Rule 23(a) is easily met here. *See Eggs*, 284 F.R.D. at 260.

b. Commonality

The Other Fox Programs Plaintiffs satisfy the commonality requirement of Rule 23(a)(2).

The key questions in this case are:

- (i) Whether TEMPLE breached its educational contract with the Other Fox Programs Plaintiffs and members of the Other Fox Programs Settlement Class;
- (ii) Whether TEMPLE was unjustly enriched by its wrongful acts and conduct;
- (iii) Whether the Other Fox Programs Plaintiffs and the Other Fox Programs Settlement Class Members have been harmed and the proper measure of relief.

These questions can be answered on a class wide basis, satisfying Rule 23(a)(2)'s commonality requirement.

c. Typicality

The Other Fox Programs Plaintiffs' claims are typical of the Other Fox Programs Settlement Class Members' claims. Certain data used for the U.S. News rankings of the degree programs included in the Other Fox Programs Settlement Class was misreported. Unlike the OMBA Settlement Class, the programs included in the Other Fox Programs Settlement Class

were never ranked No. 1. Nevertheless, the Other Fox Programs Plaintiffs, like all members of the Other Fox Programs Settlement Class, were induced to enroll in these programs by the Fox School of Business and Management's consistent national rankings.

d. Adequacy of Representation

The Other Fox Programs Plaintiffs have no interest antagonistic to that of the Other Fox Programs Settlement Class, and share the same interest of obtaining relief under this Settlement. They meet the adequacy requirement of Rule 23(a)(4).

As argued above, Plaintiffs' counsel are experienced and knowledgeable in the prosecution of class actions, and will fairly and adequately represent the interest of the Other Fox Programs Class. In addition, Bochetto & Lentz, counsel for the EMBA students, has been involved in the settlement process and will fairly and adequately represent the interest of the EMBA students within the Other Fox Programs Settlement Class.

e. Predominance and Superiority

In this case, the class action vehicle is best suited for the resolution of Plaintiffs' and the other Fox Programs Settlement Class Members' claims. The Other Fox Programs Plaintiffs allege common issues of fact and law that predominate over any individual issues that may arise. The Other Fox Programs Plaintiffs' and Settlement Class Members' claims are based on the same legal theory and are based on the same nucleus of facts arising out of TEMPLE's misreporting of ranking-related data. Further, a class action suit is superior to any other form of adjudication because it provides the best way of managing and resolving the claims at issue here. Consideration of judicial economy and prompt resolution of claims underscores the superiority of the class action in this case. The pursuit of individual lawsuits by putative class members would not be feasible and would entail considerable risk, expense and delay.

V. CONCLUSION

Based upon the foregoing reasons, Plaintiffs respectfully request that the Court grant this Motion for Preliminary Approval and enter the proposed Preliminary Approval Order.

Dated: December 21, 2018

EXHIBIT A

**CLASS SETTLEMENT AGREEMENT BETWEEN
OMBA PLAINTIFFS AND TEMPLE UNIVERSITY**

This Settlement Agreement (“Agreement”) is made and entered into as of this 7th day of December 2018 (the “Execution Date”) by and between Temple University (“Temple”) and Plaintiffs (as defined herein at Paragraph 12), both individually and on behalf of a Settlement Class (as defined herein at Paragraph 22) of students in Temple’s Fox School of Business and Management’s Online Master of Business Administration Program (“OMBA”).

WHEREAS, Plaintiffs are prosecuting a class action currently pending in the United States District Court for the Eastern District of Pennsylvania under the caption *Smith, et al. v. Temple University*, No. 18-cv-00590 (E.D. Pa.) (the “Action”);

WHEREAS, Plaintiffs’ Counsel and Temple’s Counsel have engaged in good faith arm’s-length settlement negotiations, conducted by retired Third Circuit Judge Timothy K. Lewis, and this Agreement has been reached as a result of these negotiations;

WHEREAS, Plaintiffs have concluded that settlement with Temple on the terms set forth below is the best that is practically attainable, that it is in the best interests of the Settlement Class to enter into this Agreement, and that the Agreement is fair, reasonable, and adequate, and beneficial to and in the best interests of Plaintiffs and the Settlement Class; and,

WHEREAS, the Parties expressly acknowledge that nothing in this Agreement, including payment of the Settlement Amount (as defined herein at paragraph 31), constitutes an admission of liability by Temple. Temple denies any and all wrongdoing in connection with the claims that have been or could have been alleged against it in the Action. Temple has agreed to enter into this Settlement Agreement solely to avoid the

further expense, inconvenience and distraction of burdensome and protracted litigation, and to thereby put to rest with finality this controversy with Plaintiffs and the Settlement Class;

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and among the undersigned that the Action be settled, compromised and dismissed on the merits with prejudice as to Temple, without costs as to Plaintiffs, the Settlement Class, or Temple, and subject to the approval of the Court, on the following terms and conditions:

A. Definitions

The following terms, as used in this Agreement, have the following meanings:

1. “Claims Administrator” shall mean the entity engaged by Plaintiffs’ Counsel and approved by the Court to disseminate notice and to receive, review, and process claims for payment from the Settlement Fund.

2. “Class Member” or “Class” shall mean each member of the Settlement Class, as defined in Paragraph 22 of this Agreement, who does not timely elect to be excluded from the Settlement Class, and includes, but is not limited to, Plaintiffs.

3. “Class Period” shall mean the period from and including January 1, 2015 up to and including the Execution Date of this Agreement.

4. “Court” shall mean the United States District Court for the Eastern District of Pennsylvania.

5. "Defendant" or "Temple" shall refer to Temple University Of The Commonwealth System of Higher Education, including the Fox School of Business and Management.

6. "Educational Agency" is defined as any person, entity, or organization, whether governmental, government chartered, private, or quasi-private, that engages in granting or withholding licenses or educational approvals for, administers student financial assistance to or for students of, administers tests or grants approvals necessary for the graduates to practice in the occupations for which the program is intended to prepare them, or otherwise regulates Temple in accordance with standards relating to the performance, operation, financial condition or academic standards of schools or their educational programs (including any clinical portion thereof), including, but not limited to, the United States Department of Education, any accrediting body or any state educational agency.

7. "Effective Date" shall have the meaning set forth in Paragraph 26 of this Agreement.

8. "Escrow Account" means the account with the Escrow Agent that holds the Settlement Fund.

9. "Escrow Agent" means the bank into which the Settlement Fund shall be deposited and maintained as set forth in Paragraph 31 of this Agreement.

10. "Fairness Hearing" means a hearing on the settlement proposed in this Agreement held by the Court to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court.

11. "Parties" means Temple and Plaintiffs.

12. "Plaintiffs" shall mean each of the following proposed named Class representatives: Kyle Smith, Ibrahim Fetahi, Shawn Wynn, Ara Sardarbegians, Ryan Fink, Christopher Hamilton, John Thompson and Brett Bonds.

13. "Plaintiffs' Counsel" shall refer to the law firms of Brown LLC, 111 Town Square Place, Suite 400, Jersey City, NJ 07310 and Blau Leonard Law Group, LLC, 23 Green Street, Suite 303, Huntington, NY 11743.

14. "Releasors" shall have the meaning set forth in Paragraph 29 below.

15. "Released Parties" shall have the meaning set forth in Paragraph 29 below.

16. "Released Claims" shall have the meaning set forth in Paragraph 29 below.

17. "Settlement Neutral" means the Honorable Timothy K. Lewis of Schnader Harrison Segal & Lewis LLP.

18. "Settlement Amount" shall have the meaning set forth in Paragraph 31 below.

19. "Settlement Class" shall have the meaning set forth in Paragraph 22 below.

20. "Settlement Fund" shall refer to the funds and accrued interest in the Escrow Account established in accordance with Paragraph 31 below.

21. "Temple's Counsel" shall refer to the law firms of Fine, Kaplan and Black, R.P.C., One South Broad Street, 23rd Floor, Philadelphia, PA 19107; and Tucker Law Group, LLC, Ten Penn Center, 1801 Market Street, Suite 2500, Philadelphia, PA 19103.

B. Settlement Class Certification

22. The Parties to this Agreement hereby stipulate for purposes of settlement only that the requirements of Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure are satisfied, and, subject to Court approval, the following Settlement Class

shall be certified for settlement purposes (with the understanding that, by stipulating to the proposed Settlement Class, Temple does not waive its objections that the Rule 23 requirements are not met for purposes of a litigation class):

All persons who enrolled as students in Temple's Fox School of Business and Management's Online Master of Business Administration Program between January 1, 2015 and December 7, 2018.

C. Approval of this Agreement, Stay of Case Deadlines, and Dismissal of Claims

23. Temple shall cooperate to the extent reasonably necessary in connection with Plaintiffs' Counsel's motions for preliminary and final approval of the settlement and related documents necessary to effectuate and implement the terms and conditions of this Agreement. Prior to submission of the motions for preliminary approval, notice to the Settlement Class and final approval of the settlement and any related documents, Plaintiffs' Counsel will provide drafts to Temple for its comments and approval, including the opportunity to review and comment on the proposed class notice and plan of notice.

24. Plaintiffs shall include in their Proposed Preliminary Approval Order a paragraph staying all further proceedings in the Action, except for any actions required to effectuate or enforce the Settlement Agreement, or matters related to the Settlement Fund, including applications for attorneys' fees, payment of costs, and incentive awards to Settlement Class Representatives.

25. Plaintiffs shall, following entry by the Court of an Order granting preliminary approval ("Preliminary Approval") of this Settlement and dissemination of notice to the Settlement Class, seek entry of an order granting final approval ("Final Approval") and entering final judgment in a form to be agreed upon by the Parties which shall:

- a. approve finally this Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms;
- b. determine that the Class Notice constituted, under the circumstances, the most effective and best practicable notice of this Agreement and of the Fairness Hearing, and constituted due and sufficient notice for all other purposes to all persons entitled to receive notice;
- c. confirm the appointment of Plaintiffs as class representatives and Plaintiffs' Counsel as Settlement Class Counsel;
- d. direct that the Action be dismissed with prejudice and, except as explicitly provided for in this Agreement, without costs;
- e. reserve to the United States District Court for the Eastern District of Pennsylvania exclusive jurisdiction over the settlement and this Agreement, including the administration and consummation of this settlement;
- f. determine under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay, and directing that the final judgment of dismissal as to Temple shall be entered; and
- g. require Plaintiffs' Counsel to file with the Clerk of the Court a record with the names and addresses of Class Members who timely exclude themselves from the Settlement Class, and provide a copy of the record to Temple's Counsel.

26. This Agreement shall become final only upon the expiration of the time for appeal or to seek permission to appeal from the Court's Final Approval of this Agreement and entry of the final judgment or, if an appeal from a final approval and final judgment is taken, the affirmance of such final judgment in its entirety, without modification, by the court of last resort to which an appeal of such final judgment may be taken (the "Effective Date"). It is agreed that neither the provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. § 1651, shall be taken into account in

determining if the Effective Date has occurred. The Agreement shall not be rescinded except in accordance with Paragraphs 47 through 49 of this Agreement.

D. Notice of Settlement to Class Members

27. Plaintiffs' Counsel shall take all necessary and appropriate steps to ensure that notice of this Settlement Agreement and the date of the hearing scheduled by the Court to consider the fairness, adequacy, and reasonableness of this Agreement are provided in accordance with the Federal Rules of Civil Procedure and any Court orders. Notice will be issued after preliminary approval by the Court and subject to any Court orders regarding the content and means of dissemination of notice.

28. Subject to Court approval, disbursements for any payments and expenses incurred in connection with the costs of notice and administration of the Agreement by the Claims Administrator shall be made from the Escrow Account upon written notice to the Escrow Agent by Plaintiffs' Counsel of such payments and expenses.

E. Release and Discharge

29. Upon Final Approval of this Settlement by the Court, all members of the Settlement Class, on behalf of themselves and their respective family members, heirs, executors, administrators, assigns, employers, creditors, attorneys and any entity who paid tuition on behalf of a Settlement Class Member (collectively "Releasors"), shall be deemed to have fully, finally and forever released and discharged Defendant, its past and present affiliates and related entities, successors, assigns, attorneys, representatives, directors, trustees, officers, agents, servants, insurers, and employees ("Released Parties") from all claims, actions, causes of action, lawsuits, damages, liabilities, costs and expenses, whether class or individual in nature, whether known or unknown, foreseen or

unforeseen: (i) that were alleged in this Action; or (ii) that could have been alleged in this Action and are based on, relate to, or arise out of the payment of any tuition or fees by or on behalf of any Plaintiff or Settlement Class Member to Temple; or (iii) that are based on any act or omission arising out of the conduct alleged in this Action related to a Settlement Class Member's receipt of any educational services by Temple or for loans taken in relation to those educational services, that may have been or may be brought in any forum or under any other proceeding or process relating to the repayment of tuition to or the forgiveness of debt of the Releasors, as defined above (collectively "Released Claims").

The Parties intend for the term "Released Claims" to be construed as broadly as possible, and to bar future legal or other proceedings, claims and recovery on any claim under any legal theory, relating to issues raised or which could have been raised in the Action unless prohibited by law. However, Released Claims do not encompass claims that may arise in the future from acts occurring after the end of the Class Period. The foregoing Release does not affect Releasors' repayment obligations to any Educational Agency, nor the rights of an Educational Agency to seek repayment from a Releasor of loans made to a Releasor or tuition payments made to Temple on behalf of a Releasor. Releasors agree that, in any action brought against them by an Educational Agency concerning such loans or tuition payments, they will not seek indemnification or contribution from Temple and will not seek to join Temple as a party.

Each Releasor hereby covenants and agrees that he, she, or it shall not, hereafter, assert a claim or otherwise seek to establish liability against any Released Party based in whole or in part on any Released Claims, including, but not limited to, claims of

negligence, negligent supervision, unjust enrichment, breach of contract, breach of the implied duty of good faith and/or fair dealing, or any consumer protection law from any jurisdiction. In addition, each Releasor hereby expressly waives and releases, upon entry of the Final Order and Judgment, any and all provisions, rights, or benefits conferred by Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

and any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to Section 1542 of the California Civil Code. Each member of the Settlement Class may hereafter discover facts other than or different from those which he, she or it knows or believes to be true with respect to the Released Claims. Nevertheless, each member of the Settlement Class hereby expressly waives and fully, finally and forever settles and releases, upon this settlement becoming final, the Released Claims, whether any Released Claim is known or unknown, suspected or unsuspected, contingent or non-contingent, concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. Each Releasor further forever waives and relinquishes any and all rights and benefits existing under any Released Claim relating to or arising out of any state, local or federal law, ordinance, regulation, disciplinary rule, rule of professional responsibility, order, at common law or in equity in any jurisdiction that would limit or restrict the effect or scope of the provisions of the release set forth above without regard to the subsequent discovery or existence of other or different facts.

30. Each Plaintiff and each Settlement Class Member who receives a payment from the Settlement Fund shall represent and warrant that his, her or its portion of the Released Claims is his, her or its property and he, she or it has not assigned or transferred to any person or entity any right to recovery for any claim or potential claim that would otherwise be released under this Agreement. Each Plaintiff and each Settlement Class Member who receives a payment from the Settlement Fund shall further represent and warrant that each of them has a valid and existing right to release such claims and is releasing such claims pursuant to his, her or its membership in the Settlement Class.

F. Payment

31. Temple shall pay or cause to be paid four million dollars (\$4,000,000) (the "Settlement Amount") in settlement of the claims of the Settlement Class defined in Paragraph 22 above. The Settlement Amount shall be wire transferred by Temple or its designee to the Bank designated as Escrow Agent by Plaintiffs' Counsel within twenty (20) business days of entry of an order by the Court granting preliminary approval of the settlement. Plaintiffs' Counsel shall notify Temple of the proposed financial institution into which the Settlement Amount shall be deposited, and Temple shall have the right to object to the selection of such institution. However, any such objection must be reasonable and made in good faith.

32. The Parties expressly agree that under no circumstances whatsoever shall Temple be responsible for paying any monies, benefits, costs, administrative costs, expenses, or attorneys' fees in settlement of this Action other than as expressly provided for by this Agreement, nor will Temple be required to take any action or incur any liability except as expressly provided by this Agreement.

33. Each Settlement Class Member shall look solely to the Settlement Fund for settlement and satisfaction, as provided herein, of all claims released by the Releasors pursuant to this Agreement.

G. Allocation of Settlement Fund

34. The allocation of the Settlement Fund among the Settlement Class shall be subject to a plan of allocation to be proposed by Plaintiffs' Counsel and approved by the Court. Temple will take no position with respect to such proposed plan of allocation or such plan as may be approved by the Court. Temple also will have no involvement in the claims process. However, Temple shall be entitled to receive from Plaintiffs' Counsel a list of all Class Memebers who receive payment from the Settlement Fund.

35. Temple shall not have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, use or administration of the Escrow Account, including, but not limited to, the costs and expenses of such investment, distribution, use, or administration.

H. Non-Monetary Consideration

36. Temple will issue a formal apology to students, the content of which shall be mutually agreed upon by the Parties within 60 days of the Execution Date. Temple will issue the agreed-upon apology within 30 days thereafter.

37. Temple will establish a ethics scholarship beginning the first full academic year after the Execution Date that will award \$5,000 to a single student enrolled in any of the following Fox programs: (a) Online Master of Business Administration ("OMBA"); (b) Global Master of Business Administration ("GMBA"); (c) Part-time Master of Business Administration ("PMBA"); (d) Online Master of Science in Human Resource

Management (“HRM”); (e) Online Master of Science in Digital Innovation in Marketing (“DIM”); (f) Executive Master of Business Administration (“EMBA”); and (g) Online Bachelor of Business Administration (“OBBA”) (collectively the “Fox Settled Programs”). The specific terms of that scholarship will be consistent with the terms of other scholarships offered by Temple and shall include the following criteria:

- a. The scholarship shall be awarded to a student with a demonstrated interest in the study of ethics in business who is enrolled in any of the Fox Settled Programs;
- b. The student shall be selected by a committee appointed by the Dean; and
- c. The scholarship may be renewed for a second year so long as the recipient remains in good standing and maintains a GPA of at least 3.5.

38. Temple will continue to develop and promote more robust direct and indirect reporting mechanisms, including its anonymous hotline, as well as providing greater education and information regarding whistleblower protections. Specifically, Temple will provide the following:

- a. Establish a phone number through which individuals may anonymously report issues, including suspected falsification of student data. This phone number will be readily accessible on Temple’s website. Temple will keep records of these calls, and provide them to its auditors for appropriate resolution.
- b. Create a webpage explaining that students, faculty, and other Temple-affiliated individuals are protected from retaliation for whistleblowing. A link to that webpage will be readily accessible on Temple’s website.
- c. Provide annual training for all Fox faculty and staff regarding anonymous reporting mechanisms and anti-retaliation policies for at least the next three academic years (2018-2019 through 2020-2021).

39. Temple has retained an independent auditor, who is working on issues relating to data reporting. Temple agrees to continue to retain an independent auditor for a period of at least the next three academic years (2018-19 through 2020-21).

40. For at least the next three academic years (2018-19 through 2020-21), the Fox Dean shall meet and consult with the Dean's Student Advisory Council at least once in each of the Fall and Spring semesters. The Council will consist of approximately twenty (20) students who shall be selected by the graduate student body to represent the various graduate programs, as well as three alumni from the EMBA Program who in the first year will be selected by the class representatives and subject to reasonable approval by the Dean, and thereafter, three alumni of any of the Fox Settled Programs. This group has already been assembled for the current academic year, and the alumni representatives will be added as promptly as practicable. The Council has direct access to the Dean and shall consult on school matters including school policies, marketing and branding efforts, and such other matters as the Dean designates. For 2018-19 and in future years, student representatives can attend Council meetings remotely, if necessary.

41. For at least the next three academic years (2018-19 through 2020-21), the Fox Dean shall meet and consult with the Ethics & Data Integrity Committee. This Committee will consist of three to six tenured faculty members, three to six students from the Fox Settled Programs, and two alumni of the EMBA program who in the first year will be selected by the class representatives and subject to the reasonable approval of the Dean, and thereafter two alumni of any of the Fox Settled Programs. The composition of this Committee will ensure independence and the Committee will also have access, as necessary and appropriate, to the Fox Dean, the Office of the University Provost, the

Office of Internal Audits, and the Office of University Counsel. The students shall be nominated by faculty members and students and selected by the Committee's tenured faculty members. The criteria and application process for student selection shall be agreed upon by the Committee. The Committee will meet at least once in each of the Fall and Spring semesters. The Committee shall receive reports from the administration regarding ranking surveys, submissions, and data trends. They will have the authority to question the integrity and credibility of the data. Those questions will be reviewed and resolved by Temple's independent auditor.

42. As promptly as practicable following the conclusion of the Spring 2019 semester, Temple will make available to all Settlement Class Members free access to the OMBA video vault of recorded educational materials for at least the next three academic years.

43. Beginning with the fiscal year July 1, 2019 to June 30, 2020, Temple will organize and host at least one networking event for alumni of the Fox Settled Programs in New York, New Jersey, Maryland and Delaware, at a time and place to be announced by the Fox Dean.

44. Temple will make available to Settlement Class Members twelve (12) months of career counseling through Meridian Resources (or a comparable vendor) from the later of the date of the Settlement Agreement or the student's graduation date.

I. Plaintiffs' Counsel's Fees and Expenses

45. Temple will take no position on Plaintiffs' Counsel's request for attorneys' fees and expenses, the appropriateness of any such award by the Court, or the timing of payment to Plaintiffs' Counsel. Plaintiffs' Counsel may, at a time approved by the Court,

seek an award of attorneys' fees and reasonable litigation expenses and incentive awards for class representatives approved by the Court, to be paid out of the Escrow Account after the Final Approval of the Agreement.

46. If there is any payment of attorneys' fees or reimbursement of expenses advanced by Plaintiffs' Counsel prior to the Effective Date, any attorneys, individuals or firms receiving payment shall provide letters of credit from nationally chartered banks payable to Temple sufficient to secure any repayment obligations of those attorneys, individuals or firms. In the event the Fee and Expense Award is reduced or reversed or return of the Escrow Account is otherwise required, Plaintiffs' Counsel shall, within ten (10) business days from the event which requires repayment of the Fee and Expense Award, refund to the Escrow Account the Fee and Expense Award paid to them, plus accrued interest at the same net rate as is earned by the Escrow Account.

J. Rescission

47. If the Court refuses to give Preliminary and Final Approval to this Agreement or if such approval is modified or set aside on appeal, or if the Court does not enter the final judgment provided for in Paragraph 25 of this Agreement, or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is not affirmed, then Temple and Plaintiffs shall each, in their sole discretion, have the option to rescind this Agreement in its entirety within ten (10) business days of the action giving rise to such option. If this Agreement is rescinded, within ten (10) business days of the later of the written notice of rescission to Plaintiffs' Counsel and the Escrow Agent and Temple's written instructions to the Escrow Agent, the \$4 million Settlement Fund and any accrued interest, less only the cost of notice authorized pursuant

to this Agreement and Court Order, shall be wire transferred to Temple, pursuant to its instructions.

48. If more than five percent (5%) of Settlement Class Members opt out of the Settlement Class, then Temple shall have the option to either rescind the Settlement Agreement or, alternatively, Temple shall have the right to obtain from Plaintiffs' Counsel a refund of a portion of the Settlement Amount based upon the difference between the percentage of class members who have opted out and the five percent (5%) threshold, multiplied by the total Settlement Amount. For purposes of determining the percentage of opt outs for this provision, the parties stipulate that there are 968 Settlement Class Members.

49. If this Agreement does not become final as provided for in paragraph 26, Plaintiffs' Counsel and Temple agree that this Agreement, including its exhibits, and any and all negotiations, documents, information, and discussions associated with it shall be without prejudice to the rights of Temple or Plaintiffs, shall not be deemed or construed to be an admission or denial, or evidence or lack of evidence of any violation of any statute or law or of any liability or wrongdoing, or of the truth or falsity of any of the claims or allegations made in this Action in any pleading, and shall not be used directly or indirectly, in any way, whether in this Action or in any other proceeding. The Parties specifically agree that Temple's stipulation to a Settlement Class shall not be used or relied upon by Plaintiffs in support of certification of a litigation class or in any other manner.

K. Dispute Resolution

50. Any dispute arising out of the finalization of the settlement documentation (or this Settlement Agreement) will be resolved by the Settlement Neutral. Any decision by the Settlement Neutral shall be binding on the Parties.

L. Taxes

51. Plaintiffs' Counsel shall be solely responsible for directing the Claims Administrator to file all informational and other tax returns necessary to report any taxable and/or net taxable income earned by the Settlement Fund. Further, Plaintiffs' Counsel shall be solely responsible for directing the Escrow Agent to make any tax payments, including interest and penalties due, on income earned by the Settlement Fund ("Tax Expenses"). Plaintiffs' Counsel shall be entitled to direct the Escrow Agent in writing to pay customary and reasonable Tax Expenses, including reasonable professional fees and expenses incurred in connection with carrying out their responsibilities as set forth in this Paragraph, from the applicable Settlement Fund by notifying the Escrow Agent in writing. Temple shall have no responsibility to make any tax filings or tax payments relating to this Agreement or the Settlement Fund.

52. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "Administrator" of the Settlement Amount shall be the Claims Administrator, who shall timely and properly file or cause to be filed on a timely basis, all tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, all income tax returns, all informational returns, and all returns described in Treas. Reg. § 1.468B-2(1)).

53. The Parties to this Agreement and their Counsel shall treat, and shall cause the Claims Administrator to treat, the Settlement Fund as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1. In addition, the Claims Administrator and, as required, the parties, shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1(j)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Claims Administrator to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties and thereafter to cause the appropriate filing to occur. All provisions of this Agreement shall be interpreted in a manner that is consistent with the Settlement Fund being a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1.

M. Miscellaneous

54. Plaintiffs and their Counsel represent that except for this Action, they do not have any other actions, lawsuits, or claims of any kind against the Released Parties presently pending before any state, federal, or other court, any arbitration forum, any state or federal agency, any other governmental agency or any Educational Agency.

55. Within ten (10) business days after the Settlement Agreement is filed with the Court, Temple shall serve upon relevant government officials notice of the proposed settlement in accordance with the Class Action Fairness Act, 28 U.S.C. § 1715.

56. The Parties agree not to disclose the substance of the negotiations that led to this Settlement Agreement, including any positions taken by any Party, except as

necessary to provide the Court with information necessary to consider approval of the settlement or as otherwise required by law.

57. The Parties agree that neither the Parties nor their Counsel shall issue a press release regarding the Action, the Settlement or the conduct that gave rise to the Action without prior approval by the other Party and its Counsel. Each Party's Counsel shall provide a draft of any proposed press release to the other Party for its review and approval prior to issuance. In any public comments to the news media or other third parties regarding the Action, the Settlement, or the conduct that gave rise to the Action, neither Plaintiffs nor their counsel shall disparage or criticize Temple or Fox or the actions taken by them or on their behalf by their employees.

58. The United States District Court for the Eastern District of Pennsylvania shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of this Agreement, subject to the dispute resolution provisions set forth above in Paragraph 50. This Agreement shall be governed by and interpreted according to the substantive laws of the Commonwealth of Pennsylvania.

59. This Agreement constitutes the entire agreement among Plaintiffs (and the other Releasors) and Temple (and the other Released Parties) pertaining to the settlement of the claims of the Settlement Class and supersedes any and all prior and contemporaneous undertakings of Plaintiffs and Temple in connection therewith, including the MOU executed on October 17, 2018. In entering into this Agreement, Plaintiffs and Temple have not relied upon any representation or promise made by

Plaintiffs or Temple not contained in this Agreement. This Agreement may be modified or amended only by a writing executed by Plaintiffs and Temple and approved by the Court.

60. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Releasors and Released Parties. Without limiting the generality of the foregoing: (a) each and every covenant and agreement made herein by Plaintiffs or Plaintiffs' Counsel shall be binding upon all Settlement Class Members and Releasors; and (b) each and every covenant and agreement made herein by Released Parties shall be binding upon all Released Parties.

61. This Agreement may be executed in counterparts by Plaintiffs' Counsel and Temple's Counsel, and an electronically-scanned (in either .pdf or .tiff format) signature will be considered an original signature for purposes of execution of this Agreement.

62. The headings in this Agreement are included for convenience only and shall not be deemed to constitute part of this Agreement or to affect its construction.

63. In the event this Agreement is not approved, or in the event that the Order and final judgment approving the settlement is entered but is reversed, modified, or vacated, the pre-settlement status of this Action (including, without limitation, any applicable tolling of all statutes of limitations) shall be restored, and the Agreement shall have no effect on the rights of Plaintiffs or Temple to prosecute or defend the pending Action in any respect, including the right to litigate fully the issues related to class certification, or any other defenses, which rights are specifically and expressly retained by Temple.

64. Neither Temple nor Plaintiffs, nor any of them, shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

65. Nothing expressed or implied in this Agreement is intended to or shall be construed to confer upon or give any person or entity other than Class Members, Releasors, Temple, and Released Parties any right or remedy under or by reason of this Agreement.

66. Where this Agreement requires any party to provide notice or any other communication or document to any other party, such notice, communication, or document shall be provided by electronic mail or overnight delivery to:

For the Settlement Class:

Jason T. Brown
BROWN, LLC
111 Town Square Place
Suite 400
Jersey City, NJ 07310
Tel: (877) 561-0000
Fax: (855) 582-5297
jtb@jtblawgroup.com

Steven Bennett Blau
BLAU LEONARD LAW GROUP LLC
23 Green Street, Suite 303
Huntington, NY 11743
Tel: (631) 458-1010
Sblau@blauleonardlaw.com

For Temple:

Roberta D. Liebenberg
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One South Broad Street, 23rd Floor
Philadelphia, PA 19107
Tel: (215) 567-6565
Fax: (215) 568-5872
rliebenberg@finekaplan.com

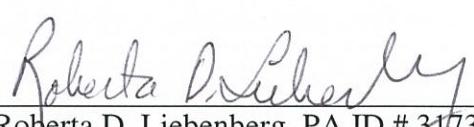
Joe H. Tucker
TUCKER LAW GROUP, LLC
Ten Penn Center
1801 Market Street, Suite 2500
Philadelphia, PA 19103
Tel: 215-875-0609
Fax: 215-559-6209
jtucker@tlgattorneys.com

Temple University
Office of University Counsel
1330 Polett Walk, Suite 300
Philadelphia, PA 19122
Tel: (215) 204-6542
ucounsel@temple.edu

67. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement, subject to Court approval.

Dated: December 7, 2018

Jason T. Brown, PA ID # 79369
BROWN, LLC
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Jersey City, NJ 07310
Tel: (877) 561-0000
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jtb@jtblawgroup.com



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rliebenberg@finekaplan.com

For Temple:

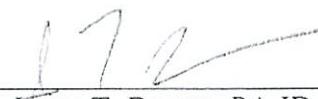
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67. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement, subject to Court approval.

Dated: December 7, 2018

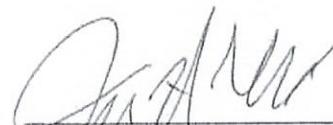


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Settlement Class*



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Attorneys for Temple University

EXHIBIT B

**CLASS SETTLEMENT AGREEMENT BETWEEN
GMBA, PMBA, EMBA, HRM, DIM AND OBBA PLAINTIFFS
AND TEMPLE UNIVERSITY**

This Settlement Agreement (“Agreement”) is made and entered into as of this 7th day of December 2018 (the “Execution Date”) by and between Temple University (“Temple”) and Plaintiffs (as defined herein at Paragraph 12), both individually and on behalf of a Settlement Class (as defined herein at Paragraph 22) of students in the following programs of Temple’s Fox School of Business and Management: Global Master of Business Administration (“GMBA”), Part-Time Master of Business Administration (“PMBA”), Online Master of Science in Human Resource Management (“HRM”), Online Master of Science in Digital Innovation in Marketing (“DIM”), Executive Master of Business Administration (“EMBA”), and Online Bachelor of Business Administration (“OBBA”).

WHEREAS, Plaintiffs are prosecuting a class action currently pending in the United States District Court for the Eastern District of Pennsylvania under the caption *Smith, et al. v. Temple University*, No. 18-cv-00590 (E.D. Pa.) (the “Action”);

WHEREAS, Plaintiffs’ Counsel and Temple’s Counsel have engaged in good faith arm’s-length settlement negotiations, conducted by retired Third Circuit Judge Timothy K. Lewis, and this Agreement has been reached as a result of these negotiations;

WHEREAS, Plaintiffs have concluded that settlement with Temple on the terms set forth below is the best that is practically attainable, that it is in the best interests of the Settlement Class to enter into this Agreement, and that the Agreement is fair, reasonable, and adequate, and beneficial to and in the best interests of Plaintiffs and the Settlement Class; and,

WHEREAS, the Parties expressly acknowledge that nothing in this Agreement, including payment of the Settlement Amount (as defined herein at paragraph 31), constitutes an admission of liability by Temple. Temple denies any and all wrongdoing in connection with the claims that have been or could have been alleged against it in the Action. Temple has agreed to enter into this Settlement Agreement solely to avoid the further expense, inconvenience and distraction of burdensome and protracted litigation, and to thereby put to rest with finality this controversy with Plaintiffs and the Settlement Class;

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and among the undersigned that the Action be settled, compromised and dismissed on the merits with prejudice as to Temple, without costs as to Plaintiffs, the Settlement Class, or Temple, and subject to the approval of the Court, on the following terms and conditions:

A. Definitions

The following terms, as used in this Agreement, have the following meanings:

1. “Claims Administrator” shall mean the entity engaged by Plaintiffs’ Counsel and approved by the Court to disseminate notice and to receive, review, and process claims for payment from the Settlement Fund.
2. “Class Member” or “Class” shall mean each member of the Settlement Class, as defined in Paragraph 22 of this Agreement, who does not timely elect to be excluded from the Settlement Class, and includes, but is not limited to, Plaintiffs.

3. "Class Period" shall mean the period from and including January 1, 2015 up to and including the Execution Date of this Agreement.

4. "Court" shall mean the United States District Court for the Eastern District of Pennsylvania.

5. "Defendant" or "Temple" shall refer to Temple University Of The Commonwealth System of Higher Education, including the Fox School of Business and Management.

6. "Educational Agency" is defined as any person, entity, or organization, whether governmental, government chartered, private, or quasi-private, that engages in granting or withholding licenses or educational approvals for, administers student financial assistance to or for students of, administers tests or grants approvals necessary for the graduates to practice in the occupations for which the program is intended to prepare them, or otherwise regulates Temple in accordance with standards relating to the performance, operation, financial condition or academic standards of schools or their educational programs (including any clinical portion thereof), including, but not limited to, the United States Department of Education, any accrediting body or any state educational agency.

7. "Effective Date" shall have the meaning set forth in Paragraph 26 of this Agreement.

8. "Escrow Account" means the account with the Escrow Agent that holds the Settlement Fund.

9. "Escrow Agent" means the bank into which the Settlement Fund shall be deposited and maintained as set forth in Paragraph 31 of this Agreement.

10. "Fairness Hearing" means a hearing on the settlement proposed in this Agreement held by the Court to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court.

11. "Parties" means Temple and Plaintiffs.

12. "Plaintiffs" shall mean each of the following proposed named Class representatives: Jeff Fonda, Ijanae Jackson, Thomas Catlett and Eric Weinberg.

13. "Plaintiffs' Counsel" shall refer to the law firms of Brown LLC, 111 Town Square Place, Suite 400, Jersey City, NJ 07310, Blau Leonard Law Group, LLC, 23 Green Street, Suite 303, Huntington, NY 11743, and Bochetto & Lentz 1524 Locust Street, Philadelphia, PA 19102.

14. "Releasors" shall have the meaning set forth in Paragraph 29 below.

15. "Released Parties" shall have the meaning set forth in Paragraph 29 below.

16. "Released Claims" shall have the meaning set forth in Paragraph 29 below.

17. "Settlement Neutral" means the Honorable Timothy K. Lewis of Schnader Harrison Segal & Lewis LLP.

18. "Settlement Amount" shall have the meaning set forth in Paragraph 31 below.

19. "Settlement Class" shall have the meaning set forth in Paragraph 22 below.

20. "Settlement Fund" shall refer to the funds and accrued interest in the Escrow Account established in accordance with Paragraph 31 below.

21. "Temple's Counsel" shall refer to the law firms of Fine, Kaplan and Black, R.P.C., One South Broad Street, 23rd Floor, Philadelphia, PA 19107; and Tucker Law Group, LLC, Ten Penn Center, 1801 Market Street, Suite 2500, Philadelphia, PA 19103.

B. Settlement Class Certification

22. The Parties to this Agreement hereby stipulate for purposes of settlement only that the requirements of Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure are satisfied, and, subject to Court approval, the following Settlement Class shall be certified for settlement purposes (with the understanding that, by stipulating to the proposed Settlement Class, Temple does not waive its objections that the Rule 23 requirements are not met for purposes of a litigation class):

All persons who enrolled as students in Temple's Fox School of Business and Management's Global Master of Business Administration ("GMBA"), Part-Time Master of Business Administration ("PMBA"), Online Master of Science in Human Resource Management ("HRM"), Online Master of Science in Digital Innovation in Marketing ("DIM"), Executive Master of Business Administration ("EMBA"), and Online Bachelor of Business Administration ("OBBA") Programs between January 1, 2015 and December 7, 2018.

C. Approval of this Agreement, Stay of Case Deadlines, and Dismissal of Claims

23. Temple shall cooperate to the extent reasonably necessary in connection with Plaintiffs' Counsel's motions for preliminary and final approval of the settlement and related documents necessary to effectuate and implement the terms and conditions of this Agreement. Prior to submission of the motions for preliminary approval, notice to the Settlement Class and final approval of the settlement and any related documents, Plaintiffs' Counsel will provide drafts to Temple for its comments and approval, including the opportunity to review and comment on the proposed class notice and plan of notice.

24. Plaintiffs shall include in their Proposed Preliminary Approval Order a paragraph staying all further proceedings in the Action, except for any actions required to effectuate or enforce the Settlement Agreement, or matters related to the Settlement

Fund, including applications for attorneys' fees, payment of costs, and incentive awards to Settlement Class Representatives.

25. Plaintiffs shall, following entry by the Court of an Order granting preliminary approval ("Preliminary Approval") of this Settlement and dissemination of notice to the Settlement Class, seek entry of an order granting final approval ("Final Approval") and entering final judgment in a form to be agreed upon by the Parties which shall:

- a. approve finally this Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms;
- b. determine that the Class Notice constituted, under the circumstances, the most effective and best practicable notice of this Agreement and of the Fairness Hearing, and constituted due and sufficient notice for all other purposes to all persons entitled to receive notice;
- c. confirm the appointment of Plaintiffs as class representatives and Plaintiffs' Counsel as Settlement Class Counsel;
- d. direct that the Action be dismissed with prejudice and, except as explicitly provided for in this Agreement, without costs;
- e. reserve to the United States District Court for the Eastern District of Pennsylvania exclusive jurisdiction over the settlement and this Agreement, including the administration and consummation of this settlement;
- f. determine under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay, and directing that the final judgment of dismissal as to Temple shall be entered; and
- g. require Plaintiffs' Counsel to file with the Clerk of the Court a record with the names and addresses of Class Members who timely exclude themselves from the Settlement Class, and provide a copy of the record to Temple's Counsel.

26. This Agreement shall become final only upon the expiration of the time for appeal or to seek permission to appeal from the Court's Final Approval of this Agreement and entry of the final judgment or, if an appeal from a final approval and final judgment is taken, the affirmance of such final judgment in its entirety, without modification, by the court of last resort to which an appeal of such final judgment may be taken (the "Effective Date"). It is agreed that neither the provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. § 1651, shall be taken into account in determining if the Effective Date has occurred. The Agreement shall not be rescinded except in accordance with Paragraphs 47 through 49 of this Agreement.

D. Notice of Settlement to Class Members

27. Plaintiffs' Counsel shall take all necessary and appropriate steps to ensure that notice of this Settlement Agreement and the date of the hearing scheduled by the Court to consider the fairness, adequacy, and reasonableness of this Agreement are provided in accordance with the Federal Rules of Civil Procedure and any Court orders. Notice will be issued after preliminary approval by the Court and subject to any Court orders regarding the content and means of dissemination of notice.

28. Subject to Court approval, disbursements for any payments and expenses incurred in connection with the costs of notice and administration of the Agreement by the Claims Administrator shall be made from the Escrow Account upon written notice to the Escrow Agent by Plaintiffs' Counsel of such payments and expenses.

E. Release and Discharge

29. Upon Final Approval of this Settlement by the Court, all members of the Settlement Class, on behalf of themselves and their respective family members, heirs,

executors, administrators, assigns, employers, creditors, attorneys and any entity who paid tuition on behalf of a Settlement Class Member (collectively “Releasors”), shall be deemed to have fully, finally and forever released and discharged Defendant, its past and present affiliates and related entities, successors, assigns, attorneys, representatives, directors, trustees, officers, agents, servants, insurers, and employees (“Released Parties”) from all claims, actions, causes of action, lawsuits, damages, liabilities, costs and expenses, whether class or individual in nature, whether known or unknown, foreseen or unforeseen: (i) that were alleged in this Action; or (ii) that could have been alleged in this Action and are based on, relate to, or arise out of the payment of any tuition or fees by or on behalf of any Plaintiff or Settlement Class Member to Temple; or (iii) that are based on any act or omission arising out of the conduct alleged in this Action related to a Settlement Class Member’s receipt of any educational services by Temple or for loans taken in relation to those educational services, that may have been or may be brought in any forum or under any other proceeding or process relating to the repayment of tuition to or the forgiveness of debt of the Releasors, as defined above (collectively “Released Claims”).

The Parties intend for the term “Released Claims” to be construed as broadly as possible, and to bar future legal or other proceedings, claims and recovery on any claim under any legal theory, relating to issues raised or which could have been raised in the Action unless prohibited by law. However, Released Claims do not encompass claims that may arise in the future from acts occurring after the end of the Class Period. The foregoing Release does not affect Releasors’ repayment obligations to any Educational Agency, nor the rights of an Educational Agency to seek repayment from a Releasor of

loans made to a Releasor or tuition payments made to Temple on behalf of a Releasor.

Releasors agree that, in any action brought against them by an Educational Agency concerning such loans or tuition payments, they will not seek indemnification or contribution from Temple and will not seek to join Temple as a party.

Each Releasor hereby covenants and agrees that he, she, or it shall not, hereafter, assert a claim or otherwise seek to establish liability against any Released Party based in whole or in part on any Released Claims, including, but not limited to, claims of negligence, negligent supervision, unjust enrichment, breach of contract, breach of the implied duty of good faith and/or fair dealing, or any consumer protection law from any jurisdiction. In addition, each Releasor hereby expressly waives and releases, upon entry of the Final Order and Judgment, any and all provisions, rights, or benefits conferred by Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

and any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to Section 1542 of the California Civil Code. Each member of the Settlement Class may hereafter discover facts other than or different from those which he, she or it knows or believes to be true with respect to the Released Claims. Nevertheless, each member of the Settlement Class hereby expressly waives and fully, finally and forever settles and releases, upon this settlement becoming final, the Released Claims, whether any Released Claim is known or unknown, suspected or unsuspected, contingent or non-contingent, concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. Each Releasor

further forever waives and relinquishes any and all rights and benefits existing under any Released Claim relating to or arising out of any state, local or federal law, ordinance, regulation, disciplinary rule, rule of professional responsibility, order, at common law or in equity in any jurisdiction that would limit or restrict the effect or scope of the provisions of the release set forth above without regard to the subsequent discovery or existence of other or different facts.

30. Each Plaintiff and each Settlement Class Member who receives a payment from the Settlement Fund shall represent and warrant that his, her or its portion of the Released Claims is his, her or its property and he, she or it has not assigned or transferred to any person or entity any right to recovery for any claim or potential claim that would otherwise be released under this Agreement. Each Plaintiff and each Settlement Class Member who receives a payment from the Settlement Fund shall further represent and warrant that each of them has a valid and existing right to release such claims and is releasing such claims pursuant to his, her or its membership in the Settlement Class.

F. Payment

31. Temple shall pay or cause to be paid one million four hundred seventy-five thousand dollars (\$1,475,000) (the "Settlement Amount") in settlement of the claims of the Settlement Class defined in Paragraph 22 above. The Settlement Amount shall be wire transferred by Temple or its designee to the Bank designated as Escrow Agent by Plaintiffs' Counsel within twenty (20) business days of entry of an order by the Court granting preliminary approval of the settlement. Plaintiffs' Counsel shall notify Temple of the proposed financial institution into which the Settlement Amount shall be deposited,

and Temple shall have the right to object to the selection of such institution. However, any such objection must be reasonable and made in good faith.

32. The Parties expressly agree that under no circumstances whatsoever shall Temple be responsible for paying any monies, benefits, costs, administrative costs, expenses, or attorneys' fees in settlement of this Action other than as expressly provided for by this Agreement, nor will Temple be required to take any action or incur any liability except as expressly provided by this Agreement.

33. Each Settlement Class Member shall look solely to the Settlement Fund for settlement and satisfaction, as provided herein, of all claims released by the Releasors pursuant to this Agreement.

G. Allocation of Settlement Fund

34. The allocation of the Settlement Fund among the Settlement Class shall be subject to a plan of allocation to be proposed by Plaintiffs' Counsel and approved by the Court. Temple will take no position with respect to such proposed plan of allocation or such plan as may be approved by the Court. Temple also will have no involvement in the claims process. However, Temple shall be entitled to receive from Plaintiffs' Counsel a list of all Class Members who receive payment from the Settlement Fund.

35. Temple shall not have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, use or administration of the Escrow Account, including, but not limited to, the costs and expenses of such investment, distribution, use, or administration.

H. Non-Monetary Consideration

36. Temple will issue a formal apology to students, the content of which shall be mutually agreed upon by the Parties within 60 days of the Execution Date. Temple will issue the agreed-upon apology within 30 days thereafter.

37. Temple will establish a ethics scholarship beginning the first full academic year after the Execution Date that will award \$5,000 to a single student enrolled in any of the following Fox programs: (a) Online Master of Business Administration (“OMBA”); (b) Global Master of Business Administration (“GMBA”); (c) Part-time Master of Business Administration (“PMBA”); (d) Online Master of Science in Human Resource Management (“HRM”); (e) Online Master of Science in Digital Innovation in Marketing (“DIM”); (f) Executive Master of Business Administration (“EMBA”); and (g) Online Bachelor of Business Administration (“OBBA”) (collectively the “Fox Settled Programs”). The specific terms of that scholarship will be consistent with the terms of other scholarships offered by Temple and shall include the following criteria:

- a. The scholarship shall be awarded to a student with a demonstrated interest in the study of ethics in business who is enrolled in any of the Fox Settled Programs;
- b. The student shall be selected by a committee appointed by the Dean; and
- c. The scholarship may be renewed for a second year so long as the recipient remains in good standing and maintains a GPA of at least 3.5.

38. Temple will continue to develop and promote more robust direct and indirect reporting mechanisms, including its anonymous hotline, as well as providing greater education and information regarding whistleblower protections. Specifically, Temple will provide the following:

- a. Establish a phone number through which individuals may anonymously report issues, including suspected falsification of student data. This phone number will be readily accessible on Temple's website. Temple will keep records of these calls, and provide them to its auditors for appropriate resolution.
- b. Create a webpage explaining that students, faculty, and other Temple-affiliated individuals are protected from retaliation for whistleblowing. A link to that webpage will be readily accessible on Temple's website.
- c. Provide annual training for all Fox faculty and staff regarding anonymous reporting mechanisms and anti-retaliation policies for at least the next three years (2018-2019 through 2020-2021).

39. Temple has retained an independent auditor, who is working on issues relating to data reporting. Temple agrees to continue to retain an independent auditor for a period of at least the next three academic years (2018-19 through 2020-21).

40. For at least the next three academic years (2018-19 through 2020-21), the Fox Dean shall meet and consult with the Dean's Student Advisory Council at least once in each of the Fall and Spring semesters. The Council will consist of approximately twenty (20) students who shall be selected by the graduate student body to represent the various graduate programs, as well as three alumni from the EMBA Program who in the first year will be selected by the class representatives and subject to reasonable approval by the Dean, and thereafter, three alumni of any of the Fox Settled Programs. This group has already been assembled for the current academic year, and the alumni representatives will be added as promptly as practicable. The Council has direct access to the Dean and shall consult on school matters including school policies, marketing and branding efforts, and such other matters as the Dean designates. For 2018-19 and in future years, student representatives can attend Council meetings remotely, if necessary.

41. For at least the next three academic years (2018-19 through 2020-21), the Fox Dean shall meet and consult with the Ethics & Data Integrity Committee. This Committee will consist of three to six tenured faculty members, three to six students from the Fox Settled Programs, and two alumni of the EMBA program who in the first year will be selected by the class representatives and subject to the reasonable approval of the Dean, and thereafter two alumni of any of the Fox Settled Programs. The composition of this Committee will ensure independence and the Committee will also have access, as necessary and appropriate, to the Fox Dean, the Office of the University Provost, the Office of Internal Audits, and the Office of University Counsel. The students shall be nominated by faculty members and students and selected by the Committee's tenured faculty members. The criteria and application process for student selection shall be agreed upon by the Committee. The Committee will meet at least once in each of the Fall and Spring semesters. The Committee shall receive reports from the administration regarding ranking surveys, submissions, and data trends. They will have the authority to question the integrity and credibility of the data. Those questions will be reviewed and resolved by Temple's independent auditor.

42. As promptly as practicable following the conclusion of the Spring 2019 semester, Temple will make available to all Settlement Class Members free access to the OMBA video vault of recorded educational materials for at least the next three academic years.

43. Beginning with the fiscal year July 1, 2019 to June 30, 2020, Temple will organize and host at least one networking event for alumni of the Fox Settled Programs in

New York, New Jersey, Maryland and Delaware, at a time and place to be announced by the Fox Dean.

44. Temple will make available to Settlement Class Members twelve (12) months of career counseling through Meridian Resources (or a comparable vendor) from the later of the date of the Settlement Agreement or the student's graduation date.

I. Plaintiffs' Counsel's Fees and Expenses

45. Temple will take no position on Plaintiffs' Counsel's request for attorneys' fees and expenses, the appropriateness of any such award by the Court, or the timing of payment to Plaintiffs' Counsel. Plaintiffs' Counsel may, at a time approved by the Court, seek an award of attorneys' fees and reasonable litigation expenses and incentive awards for class representatives approved by the Court, to be paid out of the Escrow Account after the Final Approval of the Agreement.

46. If there is any payment of attorneys' fees or reimbursement of expenses advanced by Plaintiffs' Counsel prior to the Effective Date, any attorneys, individuals or firms receiving payment shall provide letters of credit from nationally chartered banks payable to Temple sufficient to secure any repayment obligations of those attorneys, individuals or firms. In the event the Fee and Expense Award is reduced or reversed or return of the Escrow Account is otherwise required, Plaintiffs' Counsel shall, within ten (10) business days from the event which requires repayment of the Fee and Expense Award, refund to the Escrow Account the Fee and Expense Award paid to them, plus accrued interest at the same net rate as is earned by the Escrow Account.

J. Rescission

47. If the Court refuses to give Preliminary and Final Approval to this Agreement or if such approval is modified or set aside on appeal, or if the Court does not enter the final judgment provided for in Paragraph 25 of this Agreement, or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is not affirmed, then Temple and Plaintiffs shall each, in their sole discretion, have the option to rescind this Agreement in its entirety within ten (10) business days of the action giving rise to such option. If this Agreement is rescinded, within ten (10) business days of the later of the written notice of rescission to Plaintiffs' Counsel and the Escrow Agent and Temple's written instructions to the Escrow Agent, the \$1.475 million Settlement Fund and any accrued interest, less only the cost of notice authorized pursuant to this Agreement and Court Order, shall be wire transferred to Temple, pursuant to its instructions.

48. If more than five percent (5%) of Settlement Class Members opt out of the Settlement Class, then Temple shall have the option to either rescind the Settlement Agreement or, alternatively, Temple shall have the right to obtain from Plaintiffs' Counsel a refund of a portion of the Settlement Amount based upon the difference between the percentage of class members who have opted out and the five percent (5%) threshold, multiplied by the total Settlement Amount. For purposes of determining the percentage of opt outs for this provision, the parties stipulate that there are 1998 Settlement Class Members.

49. If this Agreement does not become final as provided for in paragraph 26, Plaintiffs' Counsel and Temple agree that this Agreement, including its exhibits, and any

and all negotiations, documents, information, and discussions associated with it shall be without prejudice to the rights of Temple or Plaintiffs, shall not be deemed or construed to be an admission or denial, or evidence or lack of evidence of any violation of any statute or law or of any liability or wrongdoing, or of the truth or falsity of any of the claims or allegations made in this Action in any pleading, and shall not be used directly or indirectly, in any way, whether in this Action or in any other proceeding. The Parties specifically agree that Temple's stipulation to a Settlement Class shall not be used or relied upon by Plaintiffs in support of certification of a litigation class or in any other manner.

K. Dispute Resolution

50. Any dispute arising out of the finalization of the settlement documentation (or this Settlement Agreement) will be resolved by the Settlement Neutral. Any decision by the Settlement Neutral shall be binding on the Parties.

L. Taxes

51. Plaintiffs' Counsel shall be solely responsible for directing the Claims Administrator to file all informational and other tax returns necessary to report any taxable and/or net taxable income earned by the Settlement Fund. Further, Plaintiffs' Counsel shall be solely responsible for directing the Escrow Agent to make any tax payments, including interest and penalties due, on income earned by the Settlement Fund ("Tax Expenses"). Plaintiffs' Counsel shall be entitled to direct the Escrow Agent in writing to pay customary and reasonable Tax Expenses, including reasonable professional fees and expenses incurred in connection with carrying out their responsibilities as set forth in this Paragraph, from the applicable Settlement Fund by

notifying the Escrow Agent in writing. Temple shall have no responsibility to make any tax filings or tax payments relating to this Agreement or the Settlement Fund.

52. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “Administrator” of the Settlement Amount shall be the Claims Administrator, who shall timely and properly file or cause to be filed on a timely basis, all tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, all income tax returns, all informational returns, and all returns described in Treas. Reg. § 1.468B-2(1)).

53. The Parties to this Agreement and their Counsel shall treat, and shall cause the Claims Administrator to treat, the Settlement Fund as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1. In addition, the Claims Administrator and, as required, the parties, shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1(j)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Claims Administrator to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties and thereafter to cause the appropriate filing to occur. All provisions of this Agreement shall be interpreted in a manner that is consistent with the Settlement Fund being a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1.

M. Miscellaneous

54. Plaintiffs and their Counsel represent that except for this Action, they do not have any other actions, lawsuits, or claims of any kind against the Released Parties

presently pending before any state, federal, or other court, any arbitration forum, any state or federal agency, any other governmental agency or any Educational Agency.

55. Within ten (10) business days after the Settlement Agreement is filed with the Court, Temple shall serve upon relevant government officials notice of the proposed settlement in accordance with the Class Action Fairness Act, 28 U.S.C. § 1715.

56. The Parties agree not to disclose the substance of the negotiations that led to this Settlement Agreement, including any positions taken by any Party, except as necessary to provide the Court with information necessary to consider approval of the settlement or as otherwise required by law.

57. The Parties agree that neither the Parties nor their Counsel shall issue a press release regarding the Action, the Settlement or the conduct that gave rise to the Action without prior approval by the other Party and its Counsel. Each Party's Counsel shall provide a draft of any proposed press release to the other Party for its review and approval prior to issuance. In any public comments to the news media or other third parties regarding the Action, the Settlement, or the conduct that gave rise to the Action, neither Plaintiffs nor their counsel shall disparage or criticize Temple or Fox or the actions taken by them or on their behalf by their employees.

58. The United States District Court for the Eastern District of Pennsylvania shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of this Agreement, subject to the dispute resolution provisions set forth above in Paragraph 50. This

Agreement shall be governed by and interpreted according to the substantive laws of the Commonwealth of Pennsylvania.

59. This Agreement constitutes the entire agreement among Plaintiffs (and the other Releasors) and Temple (and the other Released Parties) pertaining to the settlement of the claims of the Settlement Class and supersedes any and all prior and contemporaneous undertakings of Plaintiffs and Temple in connection therewith, including the MOU executed on October 17, 2018 and the supplemental MOU executed on November 12, 2018. In entering into this Agreement, Plaintiffs and Temple have not relied upon any representation or promise made by Plaintiffs or Temple not contained in this Agreement. This Agreement may be modified or amended only by a writing executed by Plaintiffs and Temple and approved by the Court.

60. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Releasors and Released Parties. Without limiting the generality of the foregoing: (a) each and every covenant and agreement made herein by Plaintiffs or Plaintiffs' Counsel shall be binding upon all Settlement Class Members and Releasors; and (b) each and every covenant and agreement made herein by Released Parties shall be binding upon all Released Parties.

61. This Agreement may be executed in counterparts by Plaintiffs' Counsel and Temple's Counsel, and an electronically-scanned (in either .pdf or .tiff format) signature will be considered an original signature for purposes of execution of this Agreement.

62. The headings in this Agreement are included for convenience only and shall not be deemed to constitute part of this Agreement or to affect its construction.

63. In the event this Agreement is not approved, or in the event that the Order and final judgment approving the settlement is entered but is reversed, modified, or vacated, the pre-settlement status of this Action (including, without limitation, any applicable tolling of all statutes of limitations) shall be restored, and the Agreement shall have no effect on the rights of Plaintiffs or Temple to prosecute or defend the pending Action in any respect, including the right to litigate fully the issues related to class certification, or any other defenses, which rights are specifically and expressly retained by Temple.

64. Neither Temple nor Plaintiffs, nor any of them, shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

65. Nothing expressed or implied in this Agreement is intended to or shall be construed to confer upon or give any person or entity other than Class Members, Releasors, Temple, and Released Parties any right or remedy under or by reason of this Agreement.

66. Where this Agreement requires any party to provide notice or any other communication or document to any other party, such notice, communication, or document shall be provided by electronic mail or overnight delivery to:

For the Settlement Class:

Jason T. Brown
BROWN, LLC
111 Town Square Place
Suite 400
Jersey City, NJ 07310
Tel: (877) 561-0000
Fax: (855) 582-5297
jtb@jtblawgroup.com

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For Temple:

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Temple University
Office of University Counsel
1330 Polett Walk, Suite 300
Philadelphia, PA 19122
Tel: (215) 204-6542
ucounsel@temple.edu

67. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement, subject to Court approval.

Dated: December 7, 2018

Jason T. Brown, PA ID # 79369
BROWN, LLC
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Jersey City, NJ 07310
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Dated: December 7, 2018



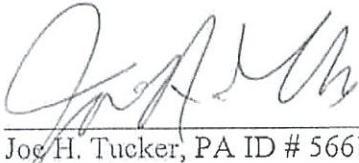
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Settlement Class*

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Attorneys for Temple University

Additional Attorneys for EMBA students in the Settlement Class



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Additional Attorneys for EMBA students in the Settlement Class

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

**KYLE SMITH, IBRAHIM FETAHI,
SHAWN WYNN, ARA SARDARBEGIANS,
RYAN FINK, CHRISTOPHER
HAMILTON, JOHN THOMPSON, BRETT
BONDS, JEFF FONDA, IJANAE
JACKSON, THOMAS CATLETT, and
ERIC WEINBERG; individually, and on
behalf of others similarly situated,**

Plaintiffs,

vs.

TEMPLE UNIVERSITY,

Defendant.

2:18-cv-00590-CMR

CLASS ACTION

CERTIFICATE OF UNCONTESTED MOTION

Pursuant to Local Rule 7.1(b), the undersigned certifies that Plaintiffs' Uncontested Motion for Preliminary Approval of Class Action Settlement is uncontested.

Respectfully submitted,

By: /s Jason T. Brown
Jason T. Brown
BROWN, LLC (formerly JTB LAW
GROUP, LLC)
111 Town Square Place, Suite 400
Jersey City, NJ 07310
T: 877-561-0000
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

**KYLE SMITH, IBRAHIM FETAHI,
SHAWN WYNN, ARA SARDARBEGIANS,
RYAN FINK, CHRISTOPHER
HAMILTON, JOHN THOMPSON, BRETT
BONDS, JEFF FONDA, IJANAE
JACKSON, THOMAS CATLETT, and
ERIC WEINBERG; individually, and on
behalf of others similarly situated,**

Plaintiffs,

vs.

TEMPLE UNIVERSITY,

Defendant.

2:18-cv-00590-CMR

CLASS ACTION

**[PROPOSED] ORDER GRANTING PLAINTIFFS' UNCONTESTED MOTION
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS**

AND NOW, this ____ day of _____, 20__, upon consideration of Plaintiffs' Uncontested Motion for Preliminary Approval of Class Action Settlements and all supporting materials, including the Parties' proposed Settlement Agreements (the "Settlement Agreements"), it is hereby **ORDERED**:

1. The Court preliminarily finds that the terms and conditions set forth in the Settlement Agreements are within the range of reasonableness for preliminary settlement approval pursuant to Fed. R. Civ. P. 23(e)(1)(B).
2. The Court finds that the Settlement Agreements resulted from good faith, arm's-length negotiations between the Parties, including a two-day in-person mediation overseen by an experienced mediator.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court conditionally certifies, for settlement purposes only, the following Settlement Classes:

- a) All persons who enrolled as students in Temple's Fox School of Business and Management's Online Master of Business Administration Program between January 1, 2015 and December 7, 2018 (the "OMBA Settlement Class"); and
- b) All persons who enrolled as students in Temple's Fox School of Business and Management's Global Master of Business Administration ("GMBA"), Part-Time Master of Business Administration ("PMBA"), Online Master of Science in Human Resource Management ("HRM"), Online Master of Science in Digital Innovation in Marketing ("DIM"), Executive Master of Business Administration ("EMBA"), and Online Bachelor of Business Administration ("OBBA") Programs between January 1, 2015 and December 7, 2018 (the "Other Fox Programs Settlement Class").

4. The Court finds, for settlement purposes only, that the claims against TEMPLE meet all prerequisites for class certification under Rule 23(a) and (b) of the Federal Rules of Civil Procedure, including that:

- a. Each Settlement Class is so numerous that joinder of all members is impracticable;
- b. There are questions of law or fact common to each Settlement Class;
- c. Plaintiffs' claims are typical of the claims of Members of their respective Settlement Classes;
- d. Plaintiffs and their counsel are capable of fairly and adequately protecting the interests of the Settlement Classes;
- e. Common questions of law and fact predominate over questions affecting only individual Settlement Class Members and accordingly, each Settlement Class is sufficiently cohesive to warrant settlement by representation; and
- f. Certification of the Settlement Classes is superior to other available methods for the fair and efficient resolution of the claims of the members of the Settlement Classes.

5. For settlement purposes only, the Court appoints Plaintiffs KYLE SMITH, IBRAHIM FETAHI, SHAWN WYNN, ARA SARDARBEGIANS, RYAN FINK, CHRISTOPHER HAMILTON, JOHN THOMPSON, and BRETT BONDS as the Settlement Class representatives for the OMBA Class.

6. For settlement purposes only, the Court appoints JEFF FONDA, IJANAE JACKSON, THOMAS CATLETT and ERIC WEINBERG as the Settlement Class representatives for the Other Fox Programs Class.

7. The Court appoints Steven Bennett Blau and Shelly A. Leonard of BLAU LEONARD LAW GROUP LLC and Jason T. Brown of BROWN LLC as Co-Lead Counsel for the OMBA Class and the Other Fox Programs Class.

8. The Court appoints George Bochetto of BOCHETTO & LENTZ as counsel for the EMBA students in the Other Fox Programs Class.

9. The Court appoints Angeion Group, LLC as the Settlement Administrator for the OMBA Class and the Other Fox Programs Class.

10. Within 45 days of entry of this Order, Co-Lead Counsel shall submit to the Court for approval a proposed form of notice; a proposed notice plan; and a proposed allocation plan. Thereafter, the Court will schedule a final approval hearing and set deadlines for the filing of a motion for final approval, a motion for attorneys' fees; expenses and class representative incentive awards, and also set deadlines for class members to object to or opt out of the settlements.

13. All proceedings in this case are stayed pending the Court's decision as to whether to grant final approval of the Settlement, except as may be necessary to implement the Settlement or comply with the terms of the Settlement Agreements.

IT IS HEREBY SO ORDERED.

BY THE COURT:

CYNTHIA M. Rufe, J.